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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			DODDS, HAROLD E	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,538

Applicant(s)

MUTTIK ET AL.

Examiner

Harold E. Dodds, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The formal drawings were received on 10 November 2004. These drawings are accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3-9, 11-17, and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Huben et al. (U.S. Patent No. 5,826,265), Kathrow et al. (U.S. Patent No. 6,393,438), and Sisodia et al. (U.S. Patent Application Publication No. US 2003/0165128).

4. Van Huben rendered obvious independent claims 1, 9, and 17 by the following:

"...storing a more up-to-date version of said file..." at col. 105, lines 60-64 and col. 18, lines 12-16.

"...portion determining logic operable to determine if a portion of said more up-to-date version of said file is already stored..." at col. 64, lines 43-45, col. 18, lines 12-16 and col. 105, lines 60-64.

"...within said target data processing device..." at col. 66, lines 17-21.

"...of one or more different more up-to-date versions of said file..." at col. 18, lines 12-16.

"...downloading logic operable to download said more up-to-date version of said file of said more up-to-date version of said file..." at col. 66, lines 30-32 and col. 18, lines 12-16.

"...of said more up-to-date version of said file already stored within said store..." at col. 18, lines 12-16 and col. 105, lines 60-64.

"...is stored on said target data processing device..." at col. 105, lines 60-64 and col. 66, lines 17-21.

"...said current version of said file..." at col. 18, lines 12-16.

"...with said more up-to-date version of said file..." at col. 18, lines 12-16.

"...to form a new current version of said file..." at col. 17, lines 51-54 and col. 18, lines 12-16.

"...of less up-to-date versions of said file..." at col. 18, lines 12-16.

"...than said new current version of said file..." col. 17, lines 51-54 and col. 18, lines 12-16.

Van Huben does not teach the segmenting of files into portions and the use of in-range processing devices.

5. However, Kathrow teaches the segmenting of files into portions as follows:

"...within a store of portions..." at col. 9, lines 58-65.

"...following on from any portion..." at col. 9, lines 62-65.

"...and when a full copy ..." at col. 9, lines 4-9.

"...version replacing logic operable to replace..." at col. 44, lines 10-15 and col. 5, lines 50-53.

"...and to discard from said store any portions..." at col. 5, lines 4-7 and col. 9, lines 61-65.

It would have been obvious to one of ordinary skill at the time of the invention to combine Kathrow with Van Huben to store portions of a file in order to store only the parts of a file, which have been modified and reduce to amount of input/output time required for updating files. Van Huben and Kathrow teach the use of related applications. They teach the use of computers, the use of memory, the use of devices, the use of data, the use of updates, and the use of current versions. Van Huben provides multiple versions of data and Kathrow provides the segmentation of files into portions of file versions.

Kathrow does not teach the use of in-range processing devices.

6. However, Sisodia teaches the use of in-range data processing devices as follows:

"...link forming logic operable to form a wireless communication link with an in-range data processing device..." at p. 2, par. 0011.

"...from said in-range data processing device..." at p. 2, par. 0011.

It would have been obvious to one of ordinary skill at the time of the invention to combine Sisodia with Van Huben and Kathrow to use an in-range processing device in order to provide an uninterrupted wireless connection, which would accurately transfer the data between systems. Van Huben, Kathrow, and Sisodia teach the use of related systems. They teach the use of computers, the use of memory, the use of devices, the use of data, the use of updates, and the use of current versions, Van Huben and Sisodia teach the use of networks, the use of remote systems, the use of communications, and the use of links, and Kathrow and Sisodia teach the use of files. Van Huben provides multiple versions of data, Kathrow provides for segmentation of files into portions of file versions, and Sisodia provides in-range data processing devices to receive the downloaded new versions.

7. As per claims 3, 11, and 19, the "...if said in-range data processing device...", is taught by Sisodia at p. 2, par. 0011, the "...is storing a portion...", is taught by Kathrow at col. 9, lines 58-65, the "...of said more up-to-date version of said file...", is taught by Van Huben at col. 18, lines 12-16,

the "...then said downloading logic is operable to download said portion..." is taught by Kathrow at col. 9, lines 58-65,
the "...of more up-to-date version of said file..." is taught by Van Huben at col. 18, lines 12-16,
and the "...to said target data processing device..." is taught by Van Huben at col. 66, lines 17-21.

8. As per claims 4, 12, and 20, the "...if said in-range data processing device..." is taught by Sisodia at p. 2, par. 0011,
the "...is storing more than one more up-to-date version of said file..." is taught by Van Huben at col. 105, lines 60-64 and col. 18, lines 12-16,
the "...then said downloading logic is operable to download first that more up-to-date version of said file..." is taught by Van Huben at col. 66, lines 30-32 and col. 18, lines 12-16,
the "...for which it will take least time to complete a full copy..." is taught by Van Huben at col. 22, lines 42-44, col. 24, lines 22-24, and col. 66, lines 30-32,
and the "...upon said target data processing device..." is taught by Van Huben at col. 66, lines 17-21.

9. As per claims 5, 13, and 21, the "...discard selection logic operable to select portions..." is taught by Kathrow at col. 5, lines 4-7, col. 6, lines 5-7, and col. 9, lines 61-65,
the "...of a more up-to-date version of said file from said store..." is taught by Van Huben at col. 18, lines 12-16 and col. 12, lines 64-66,

the "...are selected for discarding from said store based upon one or more of..." is taught by Kathrow at col. 6, lines 5-7 and col. 5, lines 5-7, the "...age..." is taught by Van Huben at col. 18, lines 12-16, the "...and amount of data needing to be downloaded..." is taught by Van Huben at col. 13, lines 25-27 and col. 66, lines 30-32, and the "...to complete said version of said file..." is taught by Van Huben at col. 24, lines 22-24 and col. 18, lines 12-16.

10. As per claims 6, 14, and 22, the "...authentication logic operable to authenticate a download..." is taught by Van Huben at col. 108, lines 25-28 and col. 66, lines 30-32, the "...from an in-range data processing device..." is taught by Sisodia at p. 2, par. 0011, and the "...using a digital signature..." is taught by Kathrow at col. 10, lines 16-18.

11. As per claims 7, 15, and 23, the "...said in-range data processing device..." is taught by Sisodia at p. 2, par. 0011, the "...transmits to said target data processing device..." is taught by Van Huben at col. 66, lines 30-32 and col. 66, lines 17-21, the "...information regarding a currently progressing downloading..." is taught by Van Huben at col. 65, lines 63-65 and col. 66, lines 30-32, the "...of a version of said file..." is taught by Van Huben at col. 18, lines 12-16, the "...to said in-range data processing device..." is taught by Sisodia at p. 2, par. 0011, the "...such that said target device..." is taught by Van Huben at col. 66, lines 17-21,

the "...may select said version...", is taught by Kathrow at col. 6, lines 5-7, at col. 3, lines 66-67, and col. 4, lines 1-2,

the "...of said file currently being downloaded...", is taught by Van Huben at col. 66, lines 30-32,

the "...to said in-range data processing device...", is taught by Sisodia at p. 2, par. 0011, and the "...for downloading to said target data processing device...", is taught by Van Huben at col. 66, lines 30-32 and 66, lines 17-21.

12. As per claims 8, 16, and 24, the "...said in-range data processing device...", is taught by Sisodia at p. 2, par. 0011, the "...also downloads a file...", is taught by Van Huben at col. 66, lines 30-32, and the "...from said target data processing device...", is taught by Van Huben at 66, lines 17-21.

13. Claims 2, 10, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Huben, Kathrow, and Sisodia as applied to claims 1, 9, and 17 above respectively, and further in view of Goldick (U.S. Patent No. 6,598,060).

As per claims 2, 10, and 18, the "...said file is one of...", is taught by Kathrow at col. 3, lines 66-67 and col. 4, lines 1-2, but the "...an anti-computer virus definition data file..." and the "...computer anti-virus scanning engine file...", are not taught by either Van Huben, Kathrow, or Sisodia.

However, Goldick teaches the use of virus definition data files and the use of virus scanning as follows:

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"For example, the log may maintain a list of resources on the system and whether each resource has been scanned, and if so, which version of virus definition file was used. Using the log of information, the virus scanner can reduce processing time by only scanning resources that are new or modified, or that were scanned by an out-of-date virus definition file..." at col. 2, lines 3-9.

It would have been obvious to one of ordinary skill at the time of the invention to combine Goldick with Van Huben, Kathrow, and Sisodia to use an anti-virus data definition file and a scanning engine in order to insure that incoming data is free from computer viruses and thus enhance the security of the operating system. They teach the use of Van Huben, Kathrow, Sisodia, and Goldick teach the use of computers, the use of memory, the use of devices, the use of data, the use of updates, and the use of versions, Van Huben, Sisodia, and Goldick teach the use of networks, the use of remote systems, the use of communications, and the use of links, and Kathrow, Sisodia, and Goldick teach the use of files. Van Huben provides multiple versions of data, Kathrow provides for segmentation of files into portions of file versions, Sisodia provides in-range data processing devices to receive the downloaded new versions, and Goldick provides virus definition files.

Response to Arguments

14. Applicants' arguments filed 10 November 2004 have been fully considered but they are not persuasive. In the first argument for independent claims 1, 9, and 17 on page 13, paragraph 3, the Applicants state:

"With respect to the cited prior art, the Examiner admits that "VanDoren does not teach the segmenting of files into portions and the use of in-range processing devices." (Page 3, the end of section 3 of the Official Action). The Examiner's admission is appreciated, and it is further noted that VanDoren actually teaches away from

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Applicants' partial updates being transmitted and loaded. As admitted, there is no recognition of the problem of transitory connections in the wireless communication field and therefore clearly no benefit of receiving and retaining partial updates."

The Examiner disagrees. Applicant's arguments with respect to claims 1, 9, and 17 have been considered but are moot in view of the new ground(s) of rejection. The VanDoren reference has been replaced by the Van Huben reference.

15. In the second argument for independent claims 1, 9, and 17 on page 13, paragraph 4 and page 14, paragraph 1, the Applicants state:

"The Examiner also admits that "Kathrow does not teach the use of in-range processing devices" at page 4, the end of section 4 of the Official Action. While Kathrow may teach the manipulation of computer files in a portion-by-portion manner, it does not contain any disclosure or suggestion of either the problem solved by the present invention (wireless communication interrupting an updated download prior to completion) or the speculative downloading of different portions of up-to-date versions of a file and to begin subsequent downloading "following up from any portion of said more up-to-date version of said file already stored within said store." In fact, Kathrow appears to disclose just the opposite, since it has as an aim putting the Windows registry back to a previously more out-of-date form when that registry has been changed, rather than seeking to update other versions to delay this state."

The Examiner disagrees. Van Huben teaches the use of a local area network whereby the individual nodes of the network are "hard-wired". Wireless connections between nodes in a network is an alternative means of communicating between the nodes in a network and thus the use of wireless communication is suggested by the Van Huben use of a local area network. Kathrow teaches the segmentation of files. The combination of Van Huben, Kathrow, and Sisoda teaches all of the features of claims 1, 9, and 17.

16. In the third argument for independent claims 1, 9, and 17 on page 14, paragraph 2, the Applicants state:

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"The Examiner correctly notes that Sisodia teaches the use of in-range data processing data transmission, but is only concerned with wireless devices which can make temporary connections to other devices. There is clearly no recognition of the problem solved by Applicants' invention in the Sisodia reference."

The Examiner disagrees. Van Huben teaches the use of a local area network whereby the individual nodes of the network are "hard-wired". Wireless connections between nodes in a network is an alternative means of communicating between the nodes in a network and thus the use of wireless communication is suggested by the Van Huben use of a local area network. The combination of Van Huben, Kathrow, and Sisodia teaches all of the features of claims 1, 9, and 17.

17. In the fourth argument for claims 1, 3-9, 11-17, and 19-24 on page 15, paragraphs 2 and 3, the Applicants state:

"Moreover, even if every aspect is shown in a plurality of prior art references, it is incumbent upon the Examiner to demonstrate a motivation or reason for selecting elements from the cited prior art references for combination in the manner of Applicants' claims. Again, there is no allegation by the Examiner that any prior art reference is related or even recognizes the problem solved by the presently claimed invention. Where does any of the prior art references disclose that there is a problem with the transitory nature of wireless communications or that such problem can be solved by storing partially complete versions of a more up-to-date file and adding to that file as additional portions are received until a complete file is on record, at which point earlier versions of the file are disregarded? It is simply imagination on the Examiner's part, as there is no disclosure in any prior art reference of such problem, let alone Applicants' claimed solution.

Therefore, the Patent Office has failed to establish any prima facie basis for rejecting claims 1, 3-9, 11-17 and 19-24 over the VanDoren/Kathrow/Sisodia combination of references."

The Examiner disagrees. This action states that it would have been obvious to one of ordinary skill at the time of the invention to combine Kathrow with Van Huben to store portions of a file in order to store only the parts of a file, which have been modified and reduce to amount of input/output time required for updating files. Likewise, this action

states that it would have been obvious to one of ordinary skill at the time of the invention to combine Sisodia with Van Huben and Kathrow to use an in-range processing device in order to provide an uninterrupted wireless connection, which would accurately transfer the data between systems. This action has detailed how the combination of Van Huben, Kathrow, and Sisodia has met all the limitations of independent claims 1, 9, and 17. Van Huben provides multiple versions of data, Kathrow provides for segmentation of files into portions of file versions, and Sisodia provides in-range data processing devices to receive the downloaded new versions. Since the responses to the first four arguments have shown that independent claims 1, 9, and 17 are still rendered obvious, claims 3-8 depend on independent claim 1, claims 11-16 depend on independent claim 9, claims 19-24 depend on independent claim 17, and no additional arguments have been provided of any of claims 3-8, 11-16, and 19-24, then these dependent claims also remain rendered obvious by the combination of Van Huben, Kathrow, and Sisodia.

18. In the fifth argument for claims 2, 10, and 18 on page 15, paragraph 4 and page 16, paragraph 1, the Applicants state:

“Claims 2, 10 and 18 stand rejected under 35 USC § 103 as being unpatentable over the Van/Doren/Kathrow/Sisodia combination as previously applied and further in view of Goldick (U.S. patent 6,598,060). Inasmuch as these claims depend from claims previously addressed, the above discussion regarding the VanDoren, Kathrow and Sisodia references and their combination is herein incorporated by reference.”

The Examiner disagrees. Since the responses to the first four arguments have shown that independent claims 1, 9, and 17 are still rendered obvious, claims 2, 10, and 18 depend on independent claims 1, 9, and 17 respectively, and no additional arguments have been provided in this paragraph for of any of claims 2, 10, and 18, then these

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dependent claims also remain rendered obvious by the combination of Van Huben, Kathrow, and Sisodia.

19. In the sixth argument for claims 2, 10, and 18 on page 16, paragraph 2, the Applicants state:

"The Goldick reference describes a method, product and medium to store and retrieve versioning information associated with an object in a distributed environment. The presently claimed invention is not related to versioning in a distributed environment, as the "up-to-date" property is determined locally. While the Examiner admits that portions of claims 2, 10 and 18 are not taught by either VanDoren, Kathrow or Sisodia (page 8, section 12 of the Official Action), he fails to point out where or how Goldick teaches the relationships missing from these references. Moreover, there is no suggestion that Goldick contains any indication of awareness of the problem solved by the present invention, let alone the presently claimed manner of solving that problem."

The Examiner disagrees. The responses to the first four arguments have shown that independent claims 1, 9, and 17 are still rendered obvious. All of the limitations of independent claims 1, 9, and 16 are met by the combination of Van Huben, Kathrow, and Sisodia. There is no requirement that Goldick also teach the limitations in independent claims 1, 9, and 16.

20. In the seventh argument for claims 1-24 on page 16, paragraph 3, the Applicants state:

"For the Examiner to successfully apply a § 103 rejection, it is incumbent upon him to establish how or where each claimed element is disclosed or suggested in at least one of the cited prior art references and then provide some reason or motivation for combining the references. The "reason" or "motivation" to combine references, as discussed by the Federal Circuit, must establish that one of ordinary skill in the art, confronted with the same problems as the present inventor and with no knowledge of the claimed invention, would select elements from the cited prior art references and then combine those elements in the manner of Applicants' claims. The Examiner has simply failed to meet this test in either the rejection based upon the VanDorn/Kathrow/Sisodia combination or the rejections based upon the VanDorn/Kathrow/Sisodia/Goldick combination of references."

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The Examiner disagrees. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection. The VanDorn reference has been substituted with the Van Huber reference. The combination of the Van Huber, Kathrow, and Sisodia references has rendered obvious claims 1, 3-9, 11-17, and 19-24. This action states that it would have been obvious to one of ordinary skill at the time of the invention to combine Kathrow with Van Huben to store portions of a file in order to store only the parts of a file, which have been modified and reduce to amount of input/output time required for updating files. Likewise, this action states that it would have been obvious to one of ordinary skill at the time of the invention to combine Sisodia with Van Huben and Kathrow to use an in-range processing device in order to provide an uninterrupted wireless connection, which would accurately transfer the data between systems. For claims 2, 10, and 18, this action states that it would have been obvious to one of ordinary skill at the time of the invention to combine Goldick with Van Huben, Kathrow, and Sisodia to use an anti-virus data definition file and a scanning engine in order to insure that incoming data is free from computer viruses and thus enhance the security of the operating system. This action demonstrates that all of the limitations of all of the claims are addressed by one or more of the above references. Furthermore, this action provides valid motivations for combining these references.

Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is

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(571)-272-4110. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571)-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harold E. Dodds, Jr.

Harold E. Dodds, Jr.
Patent Examiner
April 4, 2005


C. ROBINSON
PRIMARY EXAMINER